

PENGAD 800-631-6989

PLAINTIFF'S  
EXHIBIT

7.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

**ROBINA JENKINS,**

Plaintiff,

CIVIL ACTION

VS.

FILE NO. 2:05-CV-1049-C

**NANCY WORLEY**, individually and  
in her official capacity as  
Secretary of State, State of  
Alabama; **JOE DICKSON**, individually  
and in his official capacity as  
a member of the State Personnel  
Board, et al.

Defendants.

**COPY**

\* \* \* \* \*

DEPOSITION OF **NANCY WORLEY**, taken on  
behalf of the Plaintiff, pursuant to the  
stipulations set forth herein, before Jeana S.  
Boggs, Certified Court Reporter and Notary Public,  
at the offices of James E. Wilson, Jr. 732 Carter  
Hill Road, Montgomery, Alabama, commencing at  
approximately 10:00 a.m., Monday, January 28, 2008.

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1 APPEARANCES OF COUNSEL

2 FOR THE PLAINTIFF:

3 HONORABLE JAMES E. WILSON, JR.

4 Attorney At Law

5 732 Carter Hill Road

6 Montgomery, Alabama 36106

7 334.834.9899

8 FOR THE DEFENDANTS:

9 HONORABLE ALICE ANN BYRNE

10 Attorney At Law

11 STATE OF ALABAMA PERSONNEL DEPARTMENT

12 Legal Division

13 64 North Union Street, Suite 316

14 Montgomery, Alabama 36104

15 334.353.4481

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1 political positions or political appointed  
2 positions?

3 A Yes. I was elected vice-chair of the  
4 Alabama Democratic Party in 2007.

5 Q Okay. Now, as vice-chair of the Democratic  
6 Party, exactly what do you do?

7 A As vice-chair of the party, I do whatever  
8 they need me to do, including traveling to  
9 some counties to work with elections or with  
10 officers, including making telephone calls,  
11 including generally paperwork and serving on  
12 the Democratic National Committee. And last  
13 week, I tried to find a house for somebody  
14 who was coming into Alabama to work on a  
15 campaign. It's a variety of --

16 Q I hear you.

17 A -- job responsibilities.

18 (At which time, there was an  
19 off-the-record discussion.)

20 Q What year were you elected, let's see,  
21 Secretary of State?

22 A I was elected in November of 2002.

23 Q Okay. And you actually took office -- when

1           were you actually, I guess, installed in the  
2           office?

3       A     I took office in January of 2003.

4       Q     Okay. Upon assuming the office of -- What  
5           did you first do?

6           MS. BYRNE: Object to the form.

7       Q     Well, let me ask the question a different  
8           way.

9                   After being installed in the  
10           office, did you participate in any  
11           orientation, sessions, or anything like  
12           that, to familiarize yourself with the  
13           Secretary of State's office?

14      A     Mr. Wilson, I was given a 15-to-30-minute  
15           orientation by my predecessor on the Friday  
16           before I went in office on Monday.

17      Q     If I recall, were there some tensions that  
18           existed between you and the predecessor in  
19           office?

20           MS. BYRNE: I am going to object to the  
21           form.

22      A     I had run against?

23      Q     No. If you can --

1 appoints.

2 Q Okay. All right. Which two positions were  
3 those?

4 A Mr. Wilson, I believe the Code refers to  
5 those positions as a confidential secretary  
6 and a -- and an administrative assistant --

7 Q Right.

8 A -- I believe are the titles given to them.

9 Q I see. Did you at some point after assuming  
10 office also familiarize yourself with the  
11 Merit System Act?

12 A I did review the merit system generally, but  
13 consulted with attorneys on the intricacies  
14 of that law.

15 Q Okay. Do you recall who the attorneys were  
16 in the office or assigned to the office at  
17 the time you assumed it?

18 A When I assumed office in January of 2003,  
19 the attorney was Chuck or Charles Grainger.

20 Q Okay. Now, at some point after you assumed  
21 office, there were, I guess, a law or  
22 something requiring some budget cuts. Do  
23 you recall that?

1 2003-2004 fiscal year?

2 A I would have to do my math to multiple the  
3 18 percent times the budgeted amount, but I  
4 suspect that it's probably about that  
5 amount.

6 Q Okay. Let me just have you --

7 MS. BYRNE: I am going to object to her  
8 doing calculations here. That's  
9 ridiculous.

10 Q Could you check and see if it appears to be  
11 about an 18 percent cut from the budget for  
12 the 2003-2004 fiscal year? I tell you what,  
13 let me come back to that. Let's develop  
14 some other stuff first, and I will come back  
15 to that.

16 Now, are you generally familiar  
17 with the Rules of the State Personnel Board  
18 for the State of Alabama?

19 MS. BYRNE: Object to the form. Asked  
20 and answered. Go ahead and answer  
21 again.

22 A I am generally familiar with the Rules but  
23 not with specific details. I relied on the

1 reasons, that the appointing authority, or  
2 the Secretary of State in this situation,  
3 would have to submit a layoff plan to the  
4 State Personnel Department?

5 A I was told that I had to submit a layoff  
6 plan to the -- to the State Personnel Board.

7 Q Okay. And do you recall who would have told  
8 you that you needed to do that?

9 MS. BYRNE: I am going to object to any  
10 communications between you and  
11 your lawyers, but if it's somebody  
12 else...

13 A Mr. Wilson, I don't exactly remember who  
14 told me exactly that I had -- I received a  
15 letter asking me to submit a plan, a savings  
16 plan, I think, based on the budget. And I  
17 think any layoff of personnel would have to  
18 go to the State Personnel Board.

19 Q Okay. Let me ask you to turn to page 49 of  
20 those Rules. This chapter of the Rules is  
21 entitled "Separation from Service," and  
22 Section 670X-18.01 is identified as  
23 "Layoffs." Let me direct your attention to

1 paragraph two. Well, let's go back to  
2 paragraph one. "An appointing authority may  
3 lay off an employee whenever it is deemed  
4 necessary by reason of shortage of work  
5 funds, or the abolition of a position or  
6 other material change in duties or  
7 organization." In the case we have, the  
8 State could pass the law which requires  
9 layoffs because of the shortage of funds.  
10 Paragraph two indicates that, "The  
11 appointing authority shall submit a plan for  
12 the layoffs to the State Personnel Director,  
13 where possible at least fifteen (15) working  
14 days in advance of the effective date, who  
15 shall review the plan to ensure that."

16 Now, do you recall whether you  
17 reviewed these Rules prior to submitting the  
18 plan that -- the layoff plan to the State  
19 Personnel Director in this case?

20 A As I recall, the attorneys and I reviewed  
21 the Rules.

22 Q Okay. Now, let me back up to what we have  
23 identified as Plaintiff's Exhibit Two. Is



1 A That is correct.

2 Q Do you recall what Attorney Grainger's  
3 salary was at this time?

4 A His salary was approximately \$100,000.

5 Q \$100,000?

6 A Yes, sir. That may be salary and benefits  
7 together.

8 Q And I believe you testified he was in office  
9 when you assumed it; is that correct? When  
10 you assumed the Secretary of State's office,  
11 he was already there; is that what I  
12 understand?

13 A Mr. Grainger was the attorney three in that  
14 office when I came to that office.

15 Q Uh-huh (positive response). Now, what, if  
16 anything, happened with Mr. Grainger after  
17 submitting this budget plan, which is  
18 identified as Plaintiff's Exhibit Two?

19 A Mr. Grainger was terminated after the  
20 submission of this.

21 Q Now, after -- Let me back up and let me ask  
22 you this: When, if you recall, was Trey  
23 Granger appointed to your office?

1 MS. BYRNE: Object to the form. Answer  
2 if you can.

3 Q Do you want me to rephrase the question?

4 A He brought an attorney's ability to read the  
5 Code and interpret the Code and the Rules as  
6 any attorney I think would.

7 Q I got you. Now, your plan also indicates  
8 that in paragraph five the layoff of the  
9 supervisor of voter registration for an  
10 approximate savings of \$65,000. Was there a  
11 problem with this recommended layoff  
12 identified to you by the State Personnel  
13 Director?

14 A The State Personnel Board did, in fact, tell  
15 either Mr. Granger or Mrs. Swedenburg or  
16 maybe both that the position of supervisor  
17 of voter registration had been created by  
18 the Legislature, and there was a problem  
19 with that particular area of layoff plan.

20 Q Let me show you what I am going to mark as  
21 Plaintiff's Exhibit Six and ask you can you  
22 identify that document for me, please.

23 (At which time, the

1 Q Paragraph three.

2 A Paragraph three from Mrs. Jackie Graham  
3 says, "In response to your request to lay  
4 off the employee in the classification of  
5 Supervisor of Voter Registration, class code  
6 11972, we are uncertain of our authority to  
7 approve a layoff plan which includes a  
8 position that is statutorily mandated and  
9 required by law to carry out specific  
10 statutory functions. As such, an opinion  
11 request has been made to the Attorney  
12 General's office to address whether the  
13 Supervisor of Voter Registration is subject  
14 to a layoff plan."

15 Q Okay. Now, in light of that concern  
16 regarding the supervisor of voter  
17 registration and the issue regarding Mr. --  
18 Attorney Grainger, it would appear that the  
19 savings that you have proposed in  
20 Plaintiff's Exhibit Two of the \$228,000 plus  
21 would not be realized; is that correct?

22 A It is correct that the total amount of money  
23 would not -- if those two areas were

1 changed, the total amount of money would not  
2 be correct as to savings.

3 Q Okay. Let me show you what I will identify  
4 as Plaintiff's Exhibit Seven and ask you if  
5 you can identify that document, please,  
6 ma'am.

7 (At which time, the  
8 referred-to document was  
9 marked as Plaintiff's Exhibit  
10 No. 7.)

11 Q Are you able to identify that document,  
12 please, ma'am?

13 A This is a letter written October 15th, 2003,  
14 by Attorney Trey Granger concerning those  
15 two positions on the layoff plan.

16 Q Okay. In paragraph one it indicates that --  
17 Well, let me just read it and let me  
18 paraphrase what you are saying. "Pursuant  
19 to our conversation this morning with Alice  
20 Ann Byrne, I am writing to confirm Secretary  
21 Worley's decision to modify her pending  
22 layoff plan. Such a modification will  
23 require the proposed layoff plan be

1       administered in phases. Secretary Worley  
2       will forward to you official notification of  
3       her advised plan; however, I have been  
4       authorized to notify you of her current  
5       position. Accordingly, please accept this  
6       correspondence as confirmation of her intent  
7       to postpone any action regarding the  
8       Supervisor of Voter Registration as it  
9       relates to the pending layoff plan."

10               Now, do you recall ever submitting  
11       a modified or revised plan to the State  
12       personnel?

13       A     I do not recall submitting that.

14       Q     And the reference to the proposed layoff  
15       plan being administered in phases, could you  
16       explain that reference to me, what was meant  
17       by that, if you know?

18       A     Those are not my words. Those are Attorney  
19       Trey Granger's words. So, I would prefer  
20       not to interpret his term "phases."

21       Q     Okay. I believe the exhibits -- I believe  
22       Plaintiff's Exhibit -- this is Six, which is  
23       the October 10th correspondence from Jackie

1 Q Does paragraph three refer to the Plaintiff  
2 in this case?

3 MS. BYRNE: Object to the form.

4 A It refers to a department program manager's  
5 position.

6 Q Was that -- Did the Plaintiff hold a  
7 departmental program manager's position?

8 A There were two people who held that  
9 position.

10 Q Okay. And the Plaintiff was laid off; is  
11 that correct?

12 A Mrs. Jenkins was the person, according to  
13 the formula, who was laid off.

14 Q Okay. So, when we see paragraph three  
15 reference to abolish one departmental  
16 program manager's position, we are referring  
17 to the Plaintiff's position, right?

18 MS. BYRNE: Object to the form.

19 A It is about a department program manager's  
20 position.

21 Q Okay. Now, do you recall advising the  
22 Plaintiff that, because of budget cuts she  
23 was going to be laid off?

1       went over and got those evaluations and put  
2       them on this sheet or if someone in State  
3       Personnel put those numbers on this sheet.

4       Q    Okay. Page one indicates -- purports to be  
5       a document regarding Sharon Frith and  
6       indicates an efficiency rating of 95  
7       percent; is that correct?

8       A    That is correct.

9       Q    Okay. And page two purports to be a  
10      document on Robina Wilson as well as Sharon  
11      Frith, but it indicates an efficiency rating  
12      of -- for Mrs. Wilson, Jenkins-Wilson, of  
13      93.07 percent; is that correct?

14      A    That is correct.

15      Q    Okay. And to the best of your knowledge,  
16      was this efficiency rating used in  
17      determining which of your departmental  
18      program managers would be laid off?

19      A    In accordance with personnel rules, these --  
20      this formula was used.

21      Q    Okay. Now, subsequent to the layoff of  
22      Mrs. Jenkins, did you appoint anyone to --  
23      as an acting director of the corporate

1 division?

2 MS. BYRNE: Object to the form.

3 A I did not officially appoint anyone. But I  
4 did ask Ms. Viox to assume the duties of  
5 taking up leave slips and turning in  
6 evaluations and those kinds of  
7 responsibilities.

8 Q Let me show you what I am going to mark as  
9 Plaintiff's Exhibit Ten. Do you recall  
10 whether there were any -- First of all, can  
11 you identify what that is?

12 (At which time, the  
13 referred-to document was  
14 marked as Plaintiff's Exhibit  
15 No. 10.)

16 A This is a business card from Ms. Viox.

17 Q Okay. And what is indicated on that,  
18 please, ma'am? What is her title?

19 A It says, "Sharon Viox, Acting Director,  
20 Corporate Division."

21 Q Okay. Now, who was responsible for  
22 generating that business card for Ms. Viox?

23 A I remember asking our personnel director to



1 get some business cards for our employees.  
2 And I certainly authorized the purchase of  
3 those cards. Mrs. Nelson went around to the  
4 employees and got the information for them.

5 Q So -- Well, first of all, let me ask you  
6 this: When was this -- I think you used  
7 informal appointment made -- is that the  
8 term you used? I don't want to  
9 mischaracterize what you said.

10 MS. BYRNE: I am going to object to the  
11 form.

12 Q You know, I don't want to say anything that  
13 you didn't say. But, first of all,  
14 characterize the appointment for me again so  
15 I can use the correct phraseology.

16 MS. BYRNE: And I am going to object to  
17 the form. Go ahead.

18 A I didn't -- I did not make any official  
19 appointment.

20 Q Okay.

21 A But I did ask an employee in that office to  
22 assume the responsibilities of taking up  
23 leave slips and doing evaluations and making

1 jobs got done. I do recall Mrs. Swedenburg  
2 telling me that Mrs. Viox had the most  
3 knowledge of anyone over there in  
4 corporations --

5 Q Okay.

6 A -- about corporate matters.

7 Q Do you recall the conversation that you had  
8 with Ms. Viox about this acting appointment?

9 MS. BYRNE: Object to the form.

10 Q And about assuming this position, let me put  
11 it that way.

12 A I recall vaguely talking to Ms. Viox about  
13 some added responsibilities. And I am sure  
14 I went over those things such as evaluations  
15 and taking up leave slips and scheduling  
16 vacations and whatever.

17 Q Okay. Is it a fair characterization to say  
18 that Ms. Viox assumed responsibilities that  
19 the Plaintiff had as the departmental  
20 program manager?

21 A I believe that Ms. Viox carried out those  
22 responsibilities of taking up leave slips,  
23 scheduling vacations, and conducting

1 evaluations.

2 Q Okay. Do you have any independent  
3 recollection now how many persons were in  
4 the -- I guess that would be the corporate  
5 division?

6 A The bulk of the employees in the Secretary  
7 of State's office were in the corporate and  
8 UCC divisions. But I do not have an exact  
9 number.

10 Q Okay. What was Ms. Viox's classification in  
11 State service at the time?

12 A I think she was an ASA-3.

13 Q Now, did you notify State Personnel  
14 regarding this -- regarding Ms. Viox  
15 assuming this position?

16 MS. BYRNE: Again, I am going to object  
17 to the form.

18 A No, I didn't -- I didn't appoint her to  
19 anything, so I didn't notify State Personnel  
20 about her added responsibilities.

21 Q This request of Ms. Viox to assume this  
22 position, was it reduced to writing?

23 MS. BYRNE: I am going to object to the

1 form. Just off the record.

2 (At which time, there was an  
3 off-the-record discussion.)

4 A I don't believe that I ever wrote her any  
5 kind of letter telling her that she had  
6 these added responsibilities.

7 Q Okay. Now, what authority do you cite for  
8 giving you the authority to appoint -- I'm  
9 sorry -- asking Ms. Viox to assume the  
10 responsibilities of this position?

11 A I cite no authority whatsoever.

12 Q Are you aware of any rule of the State  
13 Personnel Board which gives you the  
14 authority to ask Ms. Viox to assume this  
15 position?

16 MS. BYRNE: Object to the form.

17 A I can't cite a specific rule that tells me I  
18 can give -- I can or can't give her added  
19 responsibilities and duties.

20 Q Are you aware of any State law which gave  
21 you the authority to ask Ms. Viox to assume  
22 this position?

23 MS. BYRNE: Object to the form.

1 A I don't know of any State law that told me  
2 to give her or not to give her added  
3 responsibilities; however, State law, I am  
4 sure, told me I had to get the job done.  
5 So, I gave those added responsibilities in  
6 that regard.

7 Q Okay. Now, let me ask you to look at the  
8 Rules of the State Personnel Board, which is  
9 Plaintiff's Exhibit Three, and let me ask  
10 you to look at page four. This is under  
11 Rules 670-X-3-.01 (b), "Kinds of  
12 Appointments." The Rules set forth kinds of  
13 appointments: A regular appointment, a  
14 temporary appointment, or a provisional  
15 appointment. Isn't it a fact that Ms. Viox  
16 did not assume the duties of this position  
17 under any of these appointments delineated  
18 in this particular section?

19 A Ms. Viox was never given any official  
20 appointment that went through State  
21 Personnel.

22 Q Okay. All right. All right. Let me ask  
23 you to look at page 31 of the State Rules.

1 provided, however, the person who refuses  
2 offers of reemployment shall forfeit such  
3 rights to subsequent placements as provided  
4 under Rule 670-X-9-.02 Subsection 5."

5 Do you have any independent  
6 knowledge as to whether Ms. Viox was on the  
7 State register for the position of  
8 departmental program manager?

9 A I don't have any recollection that that was  
10 ever checked. I believe I would have heard  
11 it if she were on that, but I don't recall  
12 that ever having been checked.

13 Q And consistent with your testimony, this was  
14 not a provisional appointment; is that  
15 correct?

16 A We made no official appointment of Ms. Viox.

17 Q Okay. Let me just mark these as -- I think  
18 we already have your answers to  
19 interrogatories, and I think they are  
20 Plaintiff's Exhibit Four. And I will just  
21 direct you to the answer to interrogatory  
22 number seven. The interrogatory asked you  
23 to state whether Sharon Viox was appointed

1 A She had to get approval from me to work on  
2 weekends for comp time purposes. So, she  
3 would always send over a request if she  
4 needed to work on a weekend.

5 Q Okay. All right. Do you recall whether Ms.  
6 Viox received any comp time while she was  
7 assuming these responsibilities as  
8 secretary?

9 A I know that I approved comp time when she  
10 worked on weekends or on holidays or in some  
11 additional capacity to her 40-hour week.

12 Q Now, such approval -- who would -- in order  
13 to pay comp time, what's the procedure that  
14 you go through?

15 A We did not have enough money to pay comp  
16 time in the Secretary of State's office, so  
17 we gave hour for hour off for comp time.  
18 So, in terms of the procedure, if the person  
19 knew that he or she had to work additional  
20 hours on some project or something that was  
21 behind, they would write me just a note or  
22 an e-mail saying, "I need to work these  
23 additional hours. Do you approve?"

1 Q Was the State Personnel Director aware of  
2 any overtime that Ms. Viox may have been  
3 working?

4 MS. BYRNE: I object to the form.

5 A I don't believe Mr. Flowers at that time  
6 kept up with individual agencies and what  
7 process they used for overtime, comp time.  
8 I am unaware if he personally checked on  
9 that.

10 Q Procedurally, would you be required to  
11 submit that information to the State  
12 Personnel Director?

13 A I don't think so. We just turned it in on  
14 the payroll type forms that we had to turn  
15 in to list comp time and that sort of  
16 documentation.

17 Q Let me ask you to look at the Rules again.  
18 Let's look at page -- it's going to be page  
19 37.

20 MS. BYRNE: Rule number?

21 MR. WILSON: Rule number 670-X-11.

22 Q Let's look at page 38 of that rule. Where  
23 it says, "Compensatory Time.



1       Notwithstanding any departmental policy to  
2       the contrary, it shall be the policy of the  
3       State of Alabama to use compensatory time  
4       rather than wages to compensate employees  
5       subject to the provisions of the Fair Labor  
6       Standards Act for performing overtime work.  
7       Departmental overtime policies contrary to  
8       the overall State policy must be approved by  
9       the State Personnel Board. Approval by the  
10      State Personnel Board may be made in those  
11      cases where compelling reasons are cited by  
12      the appointing authority."

13                You do not recall any request by  
14      you to approve compensatory time for Ms.  
15      Viox during your tenure, do you?

16                MS. BYRNE: I am going to object to the  
17      form.

18      A     I do not recall sending any statement over  
19      concerning Ms. Viox.

20      Q     Okay. Now, when you left -- When did you  
21      leave the Secretary of State's office?

22      A     In January of 2007.

23      Q     Okay. And was Ms. Viox continuing to assume

AFFIDAVIT

Before me, the undersigned authority, a Notary Public in and for said County and State of Alabama at Large, personally appeared Carolyn S. Middleton, who being known to me and being by me first duly sworn and says as follows:

1. My name is Carolyn S. Middleton and I am over 21 years of age.  
I am the State Budget Officer for the State of Alabama and have personal knowledge of that which is contained herein.
2. In fiscal year 2003-2004, several state agencies experienced recommended budget cuts, including the Secretary of State's office and the Office of Voter Registration.
3. In February of 2003, Governor Bob Riley recommended an 18.85% reduction in the budgets of both the Office of Voter Registration and the Secretary of State's Office.
4. In June of 2003, Act No. 03-313 was implemented. This Act, among other things, transferred the Office of Voter Registration into the Office of the Secretary of State and the budgets were combined.
5. In the special session in September of 2003, the Governor recommended an 18% reduction in his proposed budget for the Secretary of State's Office which now had the Office of Voter Registration.

6. The budget, as passed, represented a 12% budget cut for the Secretary of State's Office. The additional money, however, could mainly be used for federal matching money under HAVA.
7. If the restricted HAVA money is removed from the calculation, the resulting budget cut for the Secretary of State's Office is 18%. (See Exhibit 1 - Excel worksheet)

**FURTHER, THE AFFIANT SAYETH NOT**

Carolyn S. Middleton  
CAROLYN S. MIDDLETON

STATE OF ALABAMA     )  
COUNTY OF MONTGOMERY)

I, the undersigned, a Notary Public in and for said County and State, hereby certify that CAROLYN S. MIDDLETON, whose name is signed to the foregoing Affidavit and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she voluntarily executed the same on the day the same bears date.

Given under my hand and seal this 11<sup>th</sup> day of December, 2007.

[Signature]  
NOTARY PUBLIC

My Commission Expires: 10/06/08

**Secretary of State**

FY 2003 General Fund Appropriation	811,719	
3% Pay Raise	<u>16,618</u>	
Total FY 2003 Appropriation	<u>828,337</u>	
Governor's Original FY 2004 Appropriation - February	<u>672,225</u>	-18.85%

**Secretary of State and Voter Registration Combined:**

Secretary of State total	828,337	
Voter Registration Total	470,693	
Supplemental Appropriation - HAVA Match - Act 03-299	<u>640,350</u>	
Total Combined	<u>1,939,380</u>	
Governor's Original FY 2004 Appropriation - September	1,590,292	-18.00%
GF&A Sub - HAVA Funds	<u>116,000</u>	
As Passed - FY 2004	<u>1,706,292</u>	-12.02%

### **Voter Registration**

FY 2003 General Fund Appropriation	465,300	
3% Pay Raise	<u>5,393</u>	
Total FY 2003 Appropriation	<u>470,693</u>	
Governor's Original FY 2004 Appropriation - February	<u>381,984</u>	-18.85%
<b>Secretary of State and Voter Registration Combined (W/O HAVA):</b>		
Secretary of State total	828,337	
Voter Registration Total	<u>470,693</u>	
GF without HAVA funding - FY 2003	<u>1,299,030</u>	
GF without HAVA funding - FY 2004	<u>1,065,205</u>	-18.00%

## Exhibit 9

## SECRETARY OF STATE

	Actual 2000-2001	Budgeted 2001-2002	Requested 2002-2003	Increase (Decrease) From Prior Year		Governor's Recommendation 2002-2003
				Amount	Percent	
Uncumbered Balance Brought Forward	1,375,741	1,806,710	1,806,710			1,806,710
<b>RECEIPTS:</b>						
Federal and Local Funds:						
Uniform Commercial Code	538,408	216,718	500,000	283,282	130.71	500,000
Corporations	802,023	1,082,849	800,000	(282,849)	(26.12)	800,000
Home Inspectors	96,089	108,612	110,000	1,388	1.28	110,000
Electronic Voting		5,249		(5,249)	(100.00)	
State Funds:						
State General Fund	828,753	828,285	869,700	41,415	5.00	837,864
<b>TOTAL RECEIPTS</b>	<b>2,265,273</b>	<b>2,241,713</b>	<b>2,279,700</b>	<b>37,987</b>	<b>1.69</b>	<b>2,247,864</b>
<b>TOTAL AVAILABLE</b>	<b>3,641,014</b>	<b>4,048,423</b>	<b>4,086,410</b>	<b>37,987</b>	<b>0.94</b>	<b>4,054,574</b>
<b>LESS: EXPENDITURES</b>	<b>1,834,304</b>	<b>2,241,713</b>	<b>4,086,410</b>	<b>1,844,697</b>	<b>82.29</b>	<b>4,054,574</b>
Balance Uncumbered	1,806,710	1,806,710		(1,806,710)	(100.00)	
<b>SUMMARY BUDGET REQUEST</b>						
<b>ADMINISTRATIVE SUPPORT SERVICES PROGRAM:</b>						
Administration of Official Public Documents						
Element:						
Personnel Costs	1,101,890	1,188,991	1,410,021	221,030	18.59	
Employee Benefits	305,060	318,434	371,247	52,813	16.59	
Travel - In-State	3,000	7,000	7,000			
Travel - Out-of-State	15,000	28,000	23,000	(5,000)	(17.86)	
Repairs and Maintenance	5,383	44,000	44,000			
Rentals and Leases	97,894	116,000	116,000			
Utilities and Communication	116,827	160,000	303,823	143,823	89.89	
Professional Services	18,993	40,000	400,000	360,000	900.00	
Supplies/Materials/Operating Expense	157,909	252,288	872,294	620,006	245.75	
Transportation Equipment Operations	8,000	12,000	14,000	2,000	16.67	
Grants & Benefits	25		25	25	.....	
Transportation Equipment Purchases		25,000	25,000			
Other Equipment Purchases	4,323	50,000	500,000	450,000	900.00	
<b>TOTAL EXPENDITURES</b>	<b>1,834,304</b>	<b>2,241,713</b>	<b>4,086,410</b>	<b>1,844,697</b>	<b>82.29</b>	<b>4,054,574</b>
Total Number of Employees	43.00	45.50	45.50			
<b>SOURCE OF FUNDS:</b>						
State General Fund	828,753	828,285	869,700	41,415	5.00	837,864
Uniform Commercial Code	228,716	216,718	973,823	757,105	349.35	973,823
Corporations	747,454	1,082,849	1,858,568	775,719	71.64	1,858,568
Home Inspectors	29,381	108,612	379,070	270,458	249.01	379,070
Electronic Voting		5,249	5,249			5,249
<b>TOTAL FUNDS</b>	<b>1,834,304</b>	<b>2,241,713</b>	<b>4,086,410</b>	<b>1,844,697</b>	<b>82.29</b>	<b>4,054,574</b>

**AGENCY DESCRIPTION:** Provides overall management for the office including contact with public, state, county, and city offices relating to all documents filed with this office. Serves as secretary of the Board of Adjustment and keeps records for this board. Certifies elections and performs various functions for boards of registrars. Receives and records all corporations that do business within the state. Receives and registers all land records and trademarks for the state. Handles all work related to the laws for uniform commercial codes. Provides for the registration and qualifications of home inspectors in the state.

## SECRETARY OF STATE

	Actual 2001-2002	Budgeted 2002-2003	Requested 2003-2004	Increase/(Decrease) From Prior Year Amount	Percent	Governor's Recommendation 2003-2004
Uncumbered Balance Brought Forward	1,883,412	1,946,528	414,137	(1,532,391)	(78.72)	414,137
RECEIPTS:						
Federal and Local Funds:						
Uniform Commercial Code	869,232	500,000	850,000	350,000	70.00	1,023,503
Corporations	814,326	800,000	1,100,000	300,000	37.50	1,400,000
Home Inspectors	99,640					
Electronic Voting		5,249		(5,249)	(100.00)	
State Funds:						
State General Fund	828,285	811,719	1,376,846	565,127	69.62	672,225
State General Fund - Act 2002-295		16,618		(16,618)	(100.00)	
State General Fund - Conditional Release	32,152					
TOTAL RECEIPTS	2,643,635	2,133,586	3,326,846	1,193,260	55.93	3,095,728
TOTAL AVAILABLE	4,527,047	4,080,114	3,740,983	(339,131)	(8.31)	3,509,865
LESS: EXPENDITURES	2,215,662	3,665,977	3,740,983	75,006	2.05	3,509,865
TRANSFER TO BUILDING COMMISSION - Act 2002-517	364,857					
Balance Uncumbered	1,946,528	414,137		(414,137)	(100.00)	

## SUMMARY BUDGET REQUEST

ADMINISTRATIVE SUPPORT SERVICES  
PROGRAM:Administration of Official Public Documents  
Element:

Personnel Costs	1,153,275	1,497,364	1,645,479	148,115	9.89	
Employee Benefits	340,685	436,744	482,124	(4,620)	(0.95)	
Travel - In-State	4,000	10,000	7,000	(3,000)	(30.00)	
Travel - Out-of-State	12,000	32,000	21,000	(11,000)	(34.38)	
Repairs and Maintenance	15,083	102,000	41,000	(51,000)	(59.80)	
Rentals and Leases	107,735	188,000	213,000	25,000	13.30	
Utilities and Communication	120,000	198,000	240,000	42,000	21.21	
Professional Services	268,616	246,000	197,152	(48,848)	(19.86)	
Supplies/Materials/Operating Expense	142,015	679,869	783,728	109,859	16.16	
Transportation Equipment Operations	14,783	31,000	19,500	(11,500)	(37.10)	
Transportation Equipment Purchases		25,000		(25,000)	(100.00)	
Other Equipment Purchases	37,470	170,000	85,000	(85,000)	(50.00)	
TOTAL EXPENDITURES	2,215,662	3,665,977	3,740,983	75,006	2.05	3,509,865
Total Number of Employees	38.75	47.25	49.75	2.50	5.29	

## SOURCE OF FUNDS:

State General Fund	828,285	811,719	1,376,846	565,127	69.62	672,225
State General Fund - Act 2002-295		16,618		(16,618)	(100.00)	
State General Fund - Conditional Release	32,152					
Uniform Commercial Code	536,135	973,823	1,207,058	233,235	23.95	973,823
Corporations	805,236	1,858,568	1,151,830	(706,738)	(38.03)	1,858,568
Home Inspectors	13,854					
Electronic Voting		5,249	5,249			5,249
TOTAL FUNDS	2,215,662	3,665,977	3,740,983	75,006	2.05	3,509,865

**AGENCY DESCRIPTION:** Provides overall management for the office including contact with public, state, county, and city officers relating to all documents filed with this office. Serves as secretary of the Board of Adjustment and keeps records for this board. Certifies elections and performs various functions for boards of registrars. Receives and records all corporations that do business within the state. Receives and registers all land records and trademarks for the state. Handles all work related to the laws for uniform commercial codes.



## OFFICE OF THE SECRETARY OF STATE

	Actual 2002-2003	Budgeted 2003-2004	Requested 2004-2005	Increase/(Decrease) From Prior Year		Governor's Recommendation 2004-2005
				Amount	Percent	
Unencumbered Balance Brought Forward	2,019,549	7,307,697	7,878,634	570,937	7.81	7,878,634
<b>RECEIPTS:</b>						
Federal and Local Funds						
Uniform Commercial Code	385,492	1,207,058	500,000	(707,058)	(58.58)	500,000
Corporations	792,180	1,151,830	800,000	(351,830)	(30.55)	800,000
Electronic Voting	819	5,249	6,249	1,000	19.05	6,249
Voter Registration	41,527	200,000	20,000	(180,000)	(90.00)	20,000
Help America Vote - Federal	5,040,681	13,448,087	9,850,000	(3,598,087)	(26.76)	9,850,000
Interest Earned - Federal Help America Vote Act	19,864					
State Funds:						
State General Fund	811,719	1,065,205	1,972,884	907,679	85.21	1,100,663
State General Fund - Act 2002-295	23,637					
State General Fund - Transfer from Voter						
Registration	264,798					
State General Fund - Voter Registration	200,502					
State General Fund - Voter Registration -						
Act 2002-295	5,393					
State General Fund - Help America Vote -		641,087	493,000	(148,087)	(23.10)	493,000
State Match - Act 2003-299	640,350					
Departmental Emergency Fund Transfer	225,000					
<b>TOTAL RECEIPTS</b>	<b>8,451,962</b>	<b>17,718,516</b>	<b>13,642,133</b>	<b>(4,076,383)</b>	<b>(23.01)</b>	<b>12,769,912</b>
<b>TOTAL AVAILABLE</b>	<b>10,471,511</b>	<b>25,026,213</b>	<b>21,520,767</b>	<b>(3,505,446)</b>	<b>(14.01)</b>	<b>20,648,546</b>
<b>LESS: EXPENDITURES</b>	<b>3,065,532</b>	<b>17,147,579</b>	<b>19,968,012</b>	<b>2,820,433</b>	<b>16.45</b>	<b>19,588,791</b>
<b>TRANSFER TO STATE GENERAL FUND</b>	<b>98,282</b>					
Balance Unencumbered	7,307,697	7,878,634	1,552,755	(6,325,879)	(80.29)	1,059,755
<b>SUMMARY BUDGET REQUEST</b>						
<b>ADMINISTRATIVE SUPPORT SERVICES PROGRAM:</b>						
Administration of Official Public Documents						
Element:						
Personnel Costs	1,505,884	1,673,468	1,861,152	187,684	11.22	
Employee Benefits	463,031	529,009	615,790	86,781	16.40	
Travel - In-State	10,734	2,024,136	64,000	(1,960,136)	(96.84)	
Travel - Out-of-State	17,345	428,000	76,000	(352,000)	(82.24)	
Repairs and Maintenance	26,794	462,000	443,000	(19,000)	(4.11)	
Rentals and Leases	138,945	2,108,000	513,000	(1,595,000)	(75.66)	
Utilities and Communication	203,313	824,317	1,000,000	175,683	21.31	
Professional Services	417,211	2,218,143	2,446,249	228,106	10.28	
Supplies/Materials/Operating Expense	206,892	1,060,919	6,272,821	5,211,902	491.26	
Transportation Equipment Operations	35,456	31,500	431,000	399,500	1,268.25	
Grants and Benefits	75					
Transportation Equipment Purchases	30,275					
Other Equipment Purchases	9,577	5,788,087	6,245,000	456,913	7.89	
<b>TOTAL EXPENDITURES</b>	<b>3,065,532</b>	<b>17,147,579</b>	<b>19,968,012</b>	<b>2,820,433</b>	<b>16.45</b>	<b>19,588,791</b>
Total Number of Employees						
<b>SOURCE OF FUNDS:</b>						
State General Fund	1,470,164	1,706,292	2,465,884	759,592	44.52	1,593,663
State General Fund - Act 2002-295	29,030					
Uniform Commercial Code	557,017	1,207,058	536,351	(670,707)	(55.57)	536,351
Corporations	941,614	1,151,830	1,414,812	262,982	22.83	1,414,812
Electronic Voting		5,249	6,249	1,000	19.05	6,249
Voter Registration Fund	41,528	200,000	20,000	(180,000)	(90.00)	20,000
Help America Vote Federal Funds	26,179	12,877,150	15,524,716	2,647,566	20.56	16,017,716
<b>TOTAL FUNDS</b>	<b>3,065,532</b>	<b>17,147,579</b>	<b>19,968,012</b>	<b>2,820,433</b>	<b>16.45</b>	<b>19,588,791</b>



## OFFICE OF THE SECRETARY OF STATE

	Actual 2003-2004	Budgeted 2004-2005	Requested 2005-2006	Increase/(Decrease) From Prior Year		Governor's Recommendation 2005-2006
				Amount	Percent	
Unencumbered Balance Brought Forward	7,432,698	20,877,554	41,106,921	20,229,367	96.90	41,106,921
<b>RECEIPTS</b>						
Federal and Local Funds:						
Uniform Commercial Code	425,407	425,000	425,000			425,000
Corporations	852,300	850,000	876,434	26,434	3.11	876,434
Electronic Voting			6,249	6,249	.....	6,249
Voter Registration	83,876	20,000	20,000			20,000
Help America Vote - Federal	12,835,342	35,833,513		(35,833,513)	(100.00)	-
Interest Earned - Federal Help America Vote Act	59,543	287,810	411,012	123,202	42.81	411,012
Federal Voting Asst. for Individuals With Disabilities		315,172		(315,172)	(100.00)	
State Funds:						
State General Fund	1,047,720	1,100,663	1,593,683	493,020	44.79	1,593,683
State General Fund - Transfer Help America Vote	658,572	493,000		(493,000)	(100.00)	
State General Fund - Court Ordered Attorney Fees	9,000					
<b>TOTAL RECEIPTS</b>	<b>15,971,760</b>	<b>39,325,158</b>	<b>3,332,378</b>	<b>(35,992,780)</b>	<b>(91.53)</b>	<b>3,332,378</b>
<b>TOTAL AVAILABLE</b>	<b>23,404,458</b>	<b>60,202,712</b>	<b>44,439,299</b>	<b>(15,763,413)</b>	<b>(26.18)</b>	<b>44,439,299</b>
<b>LESS: EXPENDITURES</b>	<b>2,501,303</b>	<b>19,095,791</b>	<b>44,439,299</b>	<b>25,343,508</b>	<b>132.72</b>	<b>44,439,299</b>
<b>REVERSIONS TO STATE GENERAL FUND</b>	<b>25,601</b>					
<b>Balance Unencumbered</b>	<b>20,877,554</b>	<b>41,106,921</b>		<b>(41,106,921)</b>	<b>(100.00)</b>	
<b>SUMMARY BUDGET REQUEST</b>						
<b>ADMINISTRATIVE SUPPORT SERVICES PROGRAM:</b>						
Administration of Official Public Documents						
Element:						
Personnel Costs	1,259,641	1,487,690	1,561,013	73,323	4.93	
Employee Benefits	379,811	595,897	625,684	29,787	5.00	
Travel - In-State	8,618	52,000	52,500	500	0.96	
Travel - Out-of-State	12,279	104,000	104,000			
Repairs and Maintenance	41,853	62,000	87,000	25,000	40.32	
Rentals and Leases	64,887	268,000	323,000	55,000	20.52	
Utilities and Communication	340,583	4,280,000	4,756,803	476,803	11.14	
Professional Services	90,670	268,000	298,000	30,000	11.19	
Supplies/Materials/Operating Expense	289,692	2,837,488	2,934,906	97,418	3.43	
Transportation Equipment Operations	9,124	56,000	61,000	5,000	8.93	
Other Equipment Purchases	4,145	9,084,716	33,635,393	24,550,677	270.24	
<b>TOTAL EXPENDITURES</b>	<b>2,501,303</b>	<b>19,095,791</b>	<b>44,439,299</b>	<b>25,343,508</b>	<b>132.72</b>	<b>44,439,299</b>
<b>Total Number of Employees</b>	<b>49.25</b>	<b>48.75</b>	<b>47.75</b>	<b>(1.00)</b>	<b>(2.05)</b>	
<b>SOURCE OF FUNDS:</b>						
State General Fund	1,031,119	1,100,663	1,593,683	493,020	44.79	1,593,683
Uniform Commercial Code	630,873	536,351	842,693	306,342	57.12	842,693
Corporations	697,580	1,414,812	1,458,176	43,364	3.07	1,458,176
Electronic Voting		6,249	6,249			6,249
Voter Registration Fund	90,920	20,000	20,105	105	0.53	20,105
Help America Vote Federal Funds	50,811	16,017,716	40,518,393	24,500,677	152.96	40,518,393
<b>TOTAL FUNDS</b>	<b>2,501,303</b>	<b>19,095,791</b>	<b>44,439,299</b>	<b>25,343,508</b>	<b>132.72</b>	<b>44,439,299</b>

**AGENCY DESCRIPTION:** Provides overall management for the office including contact with public, state, county, and city offices relating to all documents filed with this office. Serves as secretary of the Board of Adjustment and keeps records for this board. Certifies elections and performs various functions for boards of registrars. Receives and records all corporations that do business within the state. Receives and registers all land records and trademarks for the state. Handles all work related to the laws for uniform commercial codes.

Exhibit 10

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

**ROBINA JENKINS,**

Plaintiff,

CIVIL ACTION

VS.

FILE NO. 2:05-CV-1049-C

**NANCY WORLEY**, individually and  
in her official capacity as  
Secretary of State, State of  
Alabama; **JOE DICKSON**, individually  
and in his official capacity as  
a member of the State Personnel  
Board, et al.

Defendants.

**COPY**

\* \* \* \* \*

DEPOSITION OF **JOE NATHAN DICKSON**, taken on  
behalf of the Plaintiff, pursuant to the  
stipulations set forth herein, before Jeana S.  
Boggs, Certified Court Reporter and Notary Public,  
at the offices of James E. Wilson, Jr. 732 Carter  
Hill Road, Montgomery, Alabama, commencing at  
approximately 9:03 a.m., Wednesday, January 16,  
2008.

1 APPEARANCES OF COUNSEL

2 FOR THE PLAINTIFF:

3 HONORABLE JAMES E. WILSON, JR.

4 Attorney At Law

5 732 Carter Hill Road

6 Montgomery, Alabama 36106

7 334.834.9899

8 FOR THE DEFENDANTS:

9 HONORABLE ALICE ANN BYRNE

10 Attorney At Law

11 STATE OF ALABAMA PERSONNEL DEPARTMENT

12 Legal Division

13 64 North Union Street, Suite 316

14 Montgomery, Alabama 36104

15 334.353.4481

16 ALSO PRESENT:

17 MS. JACKIE GRAHAM, STATE PERSONNEL DIR

18 \* \* \*

19  
20  
21  
22 !  
23

1 employed?

2 A I am self-employed. I am a real estate  
3 broker.

4 Q Currently? How long have you been doing  
5 that?

6 A I've had a real estate licensed broker  
7 for -- since nineteen -- about 1978.

8 Q Okay. Now, are you currently serving in  
9 some capacity with the State of Alabama?

10 A Yes.

11 Q And what is that capacity?

12 A I serve as chairman of the Alabama State  
13 Personnel Board.

14 Q Now, how long have you been a member of the  
15 Personnel Board?

16 A I was appointed in 1992, February of 1992.

17 Q Okay. And you say that you are a chairman.  
18 How did you become chairman? What's the  
19 process that you go through?

20 A A vote of the members of the Board.

21 Q Okay. Now, you are generally familiar with  
22 the rules and regulations of the State  
23 Personnel Board, are you not?

1 A Yes, sir.

2 Q Okay. What -- What is the relationship  
3 between the State Board and the State  
4 Personnel Director?

5 A We act as a supervisor as such, myself --  
6 mainly.

7 Q Is she appointed by the Board?

8 A Yes, sir.

9 Q Okay. Do you recall when she was appointed?

10 A She was appointed at the retirement of the  
11 past personnel director who retired  
12 approximately two years ago, I think --  
13 three years ago. I can't remember.

14 Q Now, what are your duties and  
15 responsibilities as chairman of the State  
16 Personnel Board?

17 A I chair the meetings, conduct the -- and  
18 then when we they conduct their business, we  
19 just chair the meetings.

20 Q Okay. Do you receive compensation for your  
21 duties and responsibilities?

22 A Yes, sir.

23 Q Okay. What is that compensation?

1 A \$50 a meeting, travel to and from  
2 Birmingham.

3 Q It's been \$50 a long time, hasn't it?

4 A Yes, sir.

5 Q About time for a raise, isn't it?

6 A The Legislature makes that decision.

7 MS. BYRNE: Feel free to help if you  
8 like.

9 A Are you going to draw up that bill?

10 Q You are also generally familiar with the  
11 Merit System Act, are you not?

12 A Yes, sir.

13 Q Okay. Now, back in 2003, the Governor and  
14 the Legislature I think passed some sort of  
15 bill with something asking for an  
16 across-the-state reduction in every  
17 department or agency; do you recall that?

18 A I recall the Governor seeking a reduction  
19 for about 18 percent.

20 Q Okay. And that involved, did it not, the  
21 laying off of employees in various State  
22 agencies and departments?

23 A Yes, sir.

1 going to mark as Plaintiff's Exhibit Two and  
2 ask you can you identify this document for  
3 us.

4 (At which time, the referred-  
5 to document was marked as  
6 Plaintiff's Exhibit No. 2.)

7 A -- 36-26?

8 Q Yeah, 36-26-6. And let me represent to you  
9 that appears to be State statute taken out  
10 of the State Code, Code of Alabama, 1975,  
11 governing meetings, powers, and duties  
12 generally of the State Board -- Personnel  
13 Board.

14 Now, let me direct your attention  
15 to paragraph three of that statute, which  
16 indicates that one of the duties of the  
17 State Personnel Board is, "To make  
18 investigations, either on petition of a  
19 citizen, taxpayer or interested party or of  
20 its own motion, concerning the enforcement  
21 and effect of this article and to require  
22 observance of its provisions and the rules  
23 and regulations made pursuant thereto."

1 Now, how do you interpret that,  
2 Mr. Dickson?

3 A I interpret it to mean that -- to make an  
4 investigation if required to. If a  
5 petition -- somebody petitions on petition  
6 of a citizen, we would require to a petition  
7 of a citizen, taxpayer or interested party.  
8 I would think that the Board has the power  
9 to investigate.

10 Q Okay. I am going to show you what I am  
11 going to mark as Plaintiff's Exhibit Three.

12 (At which time, the referred-  
13 to document was marked as  
14 Plaintiff's Exhibit No. 3.)

15 Q And let me ask you a couple of questions  
16 about --

17 MS. BYRNE: Just can I ask where this  
18 came from?

19 MR. WILSON: It came from the State Law  
20 Library.

21 MS. BYRNE: Okay. Well, you are aware  
22 it's several years out of date,  
23 just for the record. It's dated



1 Governor."

2 Okay. How do you interpret that?

3 MS. BYRNE: Object to the form.

4 Q What's your interpretation?

5 A That if you are -- if you have an appeal, if  
6 you feel that you -- something is wrong,  
7 what you do is you file a petition with the  
8 Director, and the Director gets it to the  
9 Board. And once he gets -- He gives copies  
10 to the members and to the Governor.

11 Q Okay. Now, let's go back to what we have  
12 identified as Plaintiff's Exhibit Five, I  
13 think it is, which is entitled "Petition for  
14 Review." Have you ever seen this document  
15 before?

16 A Uh-uh (negative response).

17 Q Do you know whether this document was ever  
18 presented to the Board, the State Personnel  
19 Board?

20 A Uh-uh (negative response).

21 Q Okay. On page three in the section for  
22 relief, it requests a petition that the  
23 Board set this matter for a hearing.

1 have you ever seen this petition?

2 A No, I have not seen it.

3 Q Okay. Is this a petition that should have  
4 been referred to the State Personnel Board?

5 MS. BYRNE: Object to the form.

6 A I can't say. I can't say because I didn't  
7 see it, and I don't know the time line on  
8 it. But it's -- I can't say. I haven't  
9 seen this.

10 Q Do you know whether any member of the State  
11 Personnel Board has ever seen that petition?

12 A I can't say either.

13 Q Okay. Now, the petitioner, which is the  
14 plaintiff in this case in that petition,  
15 asserts that the appointing authority, Nancy  
16 Worley, had appointed a person to her  
17 position within the two years without first  
18 offering the position to her. Would -- If  
19 you assume those allegations are true, would  
20 that have been a violation of the Merit  
21 System Act?

22 A If she had appointed somebody in a position,  
23 that position was --

1 Q Departmental program manager.

2 A If she had --

3 Q If she had.

4 A -- it would have been in violation.

5 Q Okay. And that would have been a matter  
6 that you -- and I say "you," the State  
7 Personnel Board, under the Rules could have  
8 enforced or corrected it; is that correct?

9 A That's correct.

10 Q All right. Do you recall having any  
11 conversation with the State Personnel  
12 Director regarding this petition?

13 A No.

14 Q Okay. Do you know whether any member --  
15 other member of the Board had a conversation  
16 with the State Personnel Director regarding  
17 this petition?

18 A I don't -- I can't say.

19 Q Now, let me show you what I am going to mark  
20 as Plaintiff's Exhibit Six, I think we are  
21 down to.

22 (At which time, the referred-  
23 to document was marked as

1 Q Okay. Page two of that document represents  
2 to be a business card with the name Sharon  
3 Viox on it, and indicating that she is the  
4 acting director of the corporate division.  
5 Have you ever seen that card before?

6 A No.

7 Q And I represent to you that Acting Director  
8 of the Corporate Division and the  
9 Departmental Program Manager are the same  
10 position.

11 MS. BYRNE: Object to the form.

12 Misrepresentation of the facts and  
13 assumes facts not in evidence.

14 MR. WILSON: Okay.

15 MS. BYRNE: Go ahead and answer if you  
16 -- if there's a question.

17 MR. WILSON: I think it was a  
18 statement. So, I probably should  
19 have been asking a question. But  
20 let's go on.

21 BY MR. WILSON:

22 Q Now, if you had been aware that the  
23 Secretary of State had made this appointment

1 on Ms. Viox's position almost immediately  
2 after the layoff, would the plaintiff have  
3 been entitled to a hearing challenging that  
4 appointment?

5 MS. BYRNE: Object to the form. Answer  
6 if you can.

7 A If she had petitioned the personnel director  
8 and come before the ALJ, it depends if  
9 whether or not the ALJ would have gotten  
10 to us -- whether it would have gotten to the  
11 Board or not.

12 Q Okay. Now, can we agree or would you agree  
13 with me that she was entitled to some sort  
14 of hearing before somebody?

15 MS. BYRNE: I object to the form.

16 A If she petitioned, filed a grievance -- not  
17 a grievance, but filed a complaint or  
18 whatever, to get to -- if she did that.

19 Q Do you consider the petition, which is  
20 Plaintiff's Exhibit Five, as a pleading of  
21 documents which would have afforded her a  
22 hearing before somebody, the ALJ, the State  
23 Personnel Board, somebody?

1 the Merit System Law have regarding acting  
2 personnel?

3 A There is no rule. The appointing authority  
4 runs his shop, his or her shop, and they  
5 stay within classifications. But if they  
6 decide that somebody is acting, there's  
7 nothing we can do about it.

8 Q Okay. All right. Now, let's look at page  
9 31 here. At the bottom of page it has  
10 certifications and appointments. This is  
11 Rule 670-X9-.03.

12 MS. BYRNE: 9.03?

13 MR. WILSON: Yeah. 670-X.

14 MS. BYRNE: Yeah. Just so you will  
15 know, the designation of all these  
16 rules has changed, and I attached  
17 the layoff to the motion for  
18 summary judgment the current  
19 rules. So, it's going to be very  
20 confusing, but I just wanted to  
21 point that out.

22 BY MR. WILSON:

23 Q Okay. Now, paragraph one indicates types of

1 Q Uh-huh (positive response).

2 A Acting interim director.

3 Q Uh-huh (positive response).

4 A That's what I think -- that's what I say it  
5 is.

6 Q This is not a position in classified service  
7 of State government, is it?

8 A No, sir.

9 Q Has -- Before this lawsuit, had anyone ever  
10 communicated with you about this appointment  
11 made by Ms. Worley in the State Personnel  
12 office?

13 MS. BYRNE: Object to the form.

14 Mischaracterization.

15 A No.

16 Q Do you recall any conversations with the  
17 State Personnel Director about this  
18 appointment?

19 MS. BYRNE: Object to the form.

20 Misstatement of testimony.

21 Q Now, let me represent to you that at the  
22 time Ms. Worley made this appointment!of  
23 Sharon Viox to the position, she held the

1 employees in the Secretary of State's  
2 office, their positions, so forth and so on.  
3 Under the corporate division, it has Sharon  
4 Viox as division director.

5 A Uh-huh (positive response).

6 Q Okay. Let me represent to you that she is  
7 in State service classified as an ASA-3.  
8 Would she not be working out of her  
9 classification?

10 MS. BYRNE: Object to the form. Go  
11 ahead and answer if you can.

12 A I would think she is working out of her  
13 classification because she is working as the  
14 acting division director.

15 Q Now, let me represent to you she has been  
16 doing that since Nancy Worley laid the  
17 Plaintiff off in this case. Okay?

18 A Uh-huh (positive response).

19 Q Now, she has been working out of her  
20 classification for several years.

21 A Uh-huh (positive response).

22 Q Now, based on that Attorney General's  
23 opinion, wouldn't that also be a violation



1 manager.

2 MS. BYRNE: I am going to object to  
3 that representation.

4 A I can't testify -- I can't say yea or nay on  
5 that. I just know that what the secretary -  
6 she is not Secretary of State now, I think.  
7 Is she Secretary of State now?

8 Q No.

9 A She represented, according to this material  
10 I've been reading, that she appointed her as  
11 acting -- as an acting individual, not as a  
12 classification. She didn't come before our  
13 Board and requested that classification.

14 Q And that's my point. Do you have any  
15 requests from Nancy Worley, Secretary of  
16 State, requesting that classification?

17 A No, but that's -- that's -- we have -- I've  
18 seen four or five Attorney General's opinion  
19 saying the appointing authority can appoint  
20 an acting authority. One of the things that  
21 really came to mind was the progression of  
22 the department. They appointed an acting  
23 individual to act as one to execute

1 even if they pull somebody off the  
2 reemployment register -- if they hired  
3 somebody and appointed them or if they went  
4 to a register in any department in her  
5 classification and hired anybody, then she  
6 would have a case.

7 Q Okay. She filed a petition with you saying  
8 that the lady appointed somebody to the  
9 position.

10 A But she didn't.

11 Q Yes, she did. There it is. The petition is  
12 right before you.

13 A The petition is here, but the lady that she  
14 was referring to is an acting individual,  
15 and we have got four Attorney General's  
16 opinions saying that you can do it.

17 Q You never investigated it. The Board, the  
18 State Personnel Board, never investigated  
19 the petition.

20 A We didn't investigate the petition because  
21 we never saw the petition.

22 Q Well, now, is that Ms. Jenkins' fault that  
23 you didn't see it? Whose fault is that?

Exhibit 11

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

**ROBINA JENKINS,**

Plaintiff,

CIVIL ACTION

VS.

FILE NO. 2:05-CV-1049-C

**NANCY WORLEY**, individually and  
in her official capacity as  
Secretary of State, State of  
Alabama; **JOE DICKSON**, individually  
and in his official capacity as  
a member of the State Personnel  
Board, et al.

Defendants.

**COPY**

\* \* \* \* \*

DEPOSITION OF **SHARON LUVERNE VIOX**, taken  
on behalf of the Plaintiff, pursuant to the  
stipulations set forth herein, before Jeana S.  
Boggs, Certified Court Reporter and Notary Public,  
at the offices of James E. Wilson, Jr. 732 Carter  
Hill Road, Montgomery, Alabama, commencing at  
approximately 9:03 a.m., Friday, December 21st,  
2007.

Boggs Reporting & Video  
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APPEARANCES OF COUNSEL

FOR THE PLAINTIFF:

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334.834.9899

FOR THE DEFENDANTS:

HONORABLE ALICE ANN BYRNE

Attorney At Law

STATE OF ALABAMA PERSONNEL DEPARTMENT

Legal Division

64 North Union Street, Suite 316

Montgomery, Alabama 36104

334.353.4481

\* \* \*

Plaintiff's Exhibit No. 1.....15

Plaintiff's Exhibit No. 2.....18

Plaintiff's Exhibit No. 3.....26

Plaintiff's Exhibit No. 4.....28

Plaintiff's Exhibit No. 5.....42

Plaintiff's Exhibit No. 6.....58

Plaintiff's Exhibit No. 7.....64

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1 A ASA-1.

2 Q All right. Do you recall what your duties  
3 and responsibilities were?

4 A When I first started, I was working with the  
5 foreign corporations. I was doing data  
6 entry, answering telephones.

7 Q Okay. I was looking at your -- the  
8 documents in your file at some point. You  
9 resigned from the Secretary of State's  
10 office briefly.

11 A I did for a short time.

12 Q Okay. And then you were reemployed?

13 A Yes, sir.

14 Q Were you reemployed as an ASA-1 when you  
15 were employed?

16 A I don't remember.

17 Q Okay.

18 A And that's the truth. I really don't.

19 Q Okay.

20 A I don't know if I was an ASA-3 at that point  
21 or if I was still an ASA-1.

22 Q Okay! At some point, you were promoted, I  
23 guess?

1 A Right, to ASA-3.

2 Q ASA-3?

3 A Yes, sir.

4 (At which time, there was a  
5 brief interruption.)

6 Q I think I was asking you about the duties  
7 and responsibilities for the ASA-3 position.

8 A Okay.

9 Q Well, let me back up. The approximate date  
10 as I reviewed it is about 2002. It looks  
11 like it was about June, 1990 -- I'm sorry.  
12 No. That's wrong.

13 A I don't remember to be honest about it.

14 Q About September 2000 is when you received  
15 the appointment --

16 A Okay.

17 Q -- or promotion to the --

18 A ASA-3.

19 Q ASA-3.

20 A Okay. I'll take your word because I don't  
21 remember.

22 Q Yeah, okay.

23 A I just worked through there, and it was,

1 like, okay, and I wasn't...

2 Q Now, what's your current classification?

3 A ASA-3.

4 Q Okay. What position do you currently hold  
5 with the Secretary of State?

6 A I am an ASA-3, but they have given me the  
7 title as director.

8 Q Okay. I was looking at the website, current  
9 website, of the --

10 A Secretary of State.

11 Q -- Secretary of State's office. And it  
12 lists, I guess, all the employees in the  
13 State --

14 A Yes, sir.

15 Q -- as well as --

16 A Well, just the Secretary of State's office,  
17 really.

18 Q Yeah, that's right.

19 A Yes, sir.

20 Q Just the Secretary of State's office. And  
21 down in the corporation business section, it  
22 lists you as the division director.

23 A Division director, yes, sir.

1 over that section because somebody had to  
2 keep it going. And she had called me over  
3 and said that Ms. Jenkins had been let go.  
4 And that -- not let go, but, you know, had  
5 been laid off, and that she was going to  
6 appoint me as supervisor and acting  
7 director, and that was about it.

8 Q Okay. Do you recall the approximate date  
9 when this discussion took place?

10 A No, sir, I don't.

11 Q Would it have been maybe a month or so  
12 after --

13 A It was about that, yes, sir.

14 Q -- Ms. Jenkins was laid off?

15 A Because I was waiting to see what was going  
16 to happen, and I -- just like I said, I was  
17 just trying to hold it together until  
18 somebody, you know, just did something to  
19 put somebody in charge over there.

20 Q Okay. At some point after that discussion  
21 you were, in fact, appointed the acting  
22 director or at least assumed that position?

23 A Yes, sir.



1 Q Okay. What additional duties did you assume  
2 upon becoming acting director of the  
3 corporate division.

4 A Just taking the leave slips and making sure  
5 they got turned in. Then I had to start  
6 writing new evaluations for the personnel.

7 Q Okay. Now, let me -- let's back up one  
8 minute and show you the -- on composite  
9 Exhibit Two the evaluation for the ASA-3  
10 position. And I am going to ask you to look  
11 at page two of that evaluation.

12 MS. BYRNE: What date is that? I'm  
13 sorry.

14 MR. WILSON: This is for the period  
15 1/1/2002 to 1/1/2003.

16 Q On the second page is a list of the  
17 responsibilities and duties as an ASA-3.

18 A At that time.

19 Q At that time.

20 A Yes, sir.

21 Q Does this list accurately reflect what you  
22 were doing as an ASA-3 at that time?

23 A Yes, sir.

1 Q Okay. Now, did you receive any documents or  
2 correspondence from Ms. Worley indicating  
3 that you were going to be appointed to the  
4 acting position as a division director?

5 A Nothing. The only thing I received was --  
6 at one point was some business cards with my  
7 name and that title on it, but there is  
8 nothing in writing that I know of that says  
9 that I've got -- she's, you know, appointing  
10 me to that position. Not that I am aware of  
11 except the business cards that showed up.

12 Q Okay. You never received any document from  
13 the State Personnel Board indicating that  
14 Ms. Worley had appointed you to this acting  
15 director's position?

16 A Not that I remember seeing, no, sir.

17 Q Okay. Do you know whether the Board was  
18 aware that you had been appointed?

19 A I have no idea.

20 Q Now, let me show you what I am going to mark  
21 as composite Exhibit Three, and let me see  
22 if I can find you this so you can compare  
23 the two. What we have marked as Plaintiff's

1 MR. WILSON: This is '06. Is that the  
2 same here? Is that second down  
3 there. Off the record.

4 (At which time, there was an  
5 off-the-record discussion.)

6 Q Now, I think we had the complete document  
7 there. I guess I was asking you to look at  
8 page -- which would be three instead of two.

9 A Okay.

10 Q Okay. Right. Now, that lists the  
11 responsibilities -- duties and  
12 responsibilities -- that you had as of the  
13 date of this evaluation which is 1/2/04.  
14 Okay? Now, who developed this list of your  
15 responsibilities; do you know?

16 A I was asked what I do when I am doing over  
17 there.

18 Q Right.

19 A And I gave them a general idea of what I  
20 did, and then they developed the rest of it.

21 Q Okay. So, that accurately reflects --

22 A What I was doing at the time.

23 Q -- what you were doing at the time?

1 A Uh-huh (positive response).

2 Q Okay. Now, is it a fair statement to say  
3 that your responsibilities increased -- the  
4 duties and responsibilities increased after  
5 you were appointed the acting director?

6 A Yes, sir.

7 Q Okay. And let's just compare, if we will,  
8 the duties and responsibilities that you had  
9 when you were an ASA -- let's get it correct  
10 from the evaluation.

11 A When I was working for Robina.

12 Q Right. Yeah. The evaluation period here is  
13 12/4/02; is that correct?

14 A 1/2 of '02 --

15 Q 1/2/03.

16 A -- to 1 of '03.

17 Q Yeah. It was actually signed 12/4.

18 A Uh-huh (positive response).

19 Q And the second page that we are looking at  
20 is the duties and responsibilities that you  
21 had at that time --

22 A Uh-huh (positive response), yes.

23 Q -- versus the duties and responsibilities

1 did some of the evaluations of those nine  
2 personnel?

3 A Anybody that was working in corporations  
4 during that time frame after Ms. Jenkins  
5 left, I did the evaluations on.

6 Q Okay. Now, did Ms. Worley at any time  
7 indicate to you that your appointment as  
8 acting director was a promotion?

9 A No.

10 Q Okay. Did she at any time indicate that  
11 this was a temporary appointment?

12 A Yes.

13 Q Okay. Did she give you a time limitation  
14 that she thought you would --

15 A No.

16 Q Okay. Did she at any time indicate to you  
17 that this was an emergency appointment?

18 A I don't think so.

19 Q Okay. How about an exceptional appointment?

20 A I don't think so. It was just --

21 Q You don't know what I am talking about when  
22 I say these things, do you?

23 A No, sir.

1 Q Okay. And let me ask you just for the  
2 record about a couple of other things. Did  
3 she ever indicate that it was a provisional  
4 appointment?

5 A No, sir. She just said I need you to do  
6 this, and I did it.

7 Q Okay.

8 A Because I was just trying to hold it  
9 together.

10 Q Okay. And did she ever indicate that it was  
11 a conditional appointment?

12 A I don't remember her using those words.

13 Q Okay. Did you ever apply through the State  
14 Personnel Department for the classification  
15 of division director of the corporate  
16 division?

17 A No, sir.

18 Q Okay. Do you know whether you have ever  
19 been included on the State personnel  
20 register as a person eligible to be  
21 appointed to the division director's  
22 position in the Secretary of State's office?

23 A No, sir.

1 Q Do you know whether you have ever been  
2 listed by the State Personnel Department as  
3 a person eligible for appointment to the  
4 position of division director in the  
5 Secretary of State's office?

6 A No, sir.

7 Q Have you ever been included on a State  
8 personnel register as a person in a class  
9 who could compete for a promotion to the  
10 position of division director in the  
11 Secretary of State's office?

12 A No, sir.

13 Q Now, since your appointment as acting  
14 director of the corporate division,  
15 Secretary of State's office, have you  
16 received a salary adjustment as a result of  
17 being appointed acting director?

18 A No, sir. The only money I have ever  
19 received is just my step raises.

20 Q Okay.

21 MS. BYRNE: Is what?

22 THE WITNESS: My raises.

23 Q Merit raises.

1 A There we go.

2 Q Now, you are currently being compensated by  
3 the State of Alabama for the position or  
4 classification as an ASA-3; is that correct?

5 A Correct.

6 Q Did Ms. Worley at any time prior to leaving  
7 office -- I may have asked this, but I'm  
8 going to get confused -- indicate to you  
9 that your position was going to become  
10 permanent?

11 A No.

12 Q Okay. Have you ever taken an examination  
13 offered by the State Personnel Board for the  
14 classification of division director of the  
15 Secretary of State's office?

16 A No, sir.

17 Q Have you ever held a position or held a  
18 classification in State service as a State  
19 professional trainee to the position of  
20 department program manager?

21 A No, sir.

22 Q Okay. Have you ever heard of such position?

23 A No, sir.



1 A Yes, sir.

2 Q And I assume that Jean Jordan was the person  
3 that you were supervising; is that correct?

4 A Yes, sir.

5 Q Was she under your supervision when you were  
6 first appointed acting director of the  
7 Secretary of State by Ms. Worley?

8 A Yes, sir.

9 Q Okay. All right. Let me ask you about the  
10 second evaluation in this composite exhibit.  
11 Is not this the evaluation of Elaine --

12 A Swearengin.

13 Q -- Swearengin?

14 A Uh-huh (positive response).

15 Q And the date of the evaluation is 04 -- I'm  
16 sorry. 04 --

17 A 01/06 to --

18 Q Yeah.

19 A -- 04/01/07.

20 Q Okay. Is this evaluation signed by you?

21 A It is.

22 Q And the date of the evaluation is --

23 A 2/23 of '07.

1 Ms. Worley, and it was -- it was just a lot  
2 of tension.

3 Q Okay. Now, as a result of these transfers  
4 or resignations and bringing in new persons,  
5 were there occasions that you had to work  
6 after hours and try to keep things together?

7 A Yes, sir.

8 Q During the course of a week when, you know,  
9 the transition was taking place,  
10 approximately how many hours do you think  
11 that you had to work beyond your regular  
12 working hours?

13 A Probably a couple of hours a day.

14 Q Okay.

15 A But that was volunteer -- voluntary.

16 Q Okay. Your regular working hours was -- was  
17 it 40 hours a week, I think?

18 A Eight to five, yes, sir.

19 Q Eight to five. And were there occasions  
20 also that you had to work on the weekends?

21 A Yes, sir, a couple.

22 Q Do you recall maybe how many weekends during

23 --

1 A No, sir, I don't remember. I don't keep  
2 track. I just did what had to be done to  
3 make the work happen.

4 Q Okay. If you worked extra hours, would  
5 it -- would you necessarily have to be using  
6 a computer? What kinds of stuff would you  
7 be doing?

8 A Yeah, I would be doing -- A couple of times,  
9 I had to work extra on the weekend because I  
10 had to post checks, and I would be using a  
11 computer to post checks, yes, sir. And if I  
12 was doing data entry, I would be using the  
13 computer to do the data entry for whatever I  
14 was working on.

15 Q Okay.

16 A Most of my job that I do is -- relates to a  
17 computer.

18 Q I got you. So, and when you get through  
19 with your computer, you sign off?

20 A Yes, sir.

21 Q So, there would probably be a log somewhere  
22 of the time period that you signed off on  
23 the computer?

1 A Yes, there should be, sir, somewhere.

2 Q And also the time period that you worked on  
3 weekends; is that --

4 A Yes, sir, it should be. Because if I was  
5 logged on the computer, it would be there.

6 Q Uh-huh (positive response). Now, you say  
7 this was voluntary?

8 A Yes, sir.

9 Q Did you ever ask anybody to be compensated  
10 for this extra time?

11 A I was told because of the position I was  
12 holding as supervisor that there was -- that  
13 I couldn't get comp time unless I worked --  
14 if I worked, like, on a holiday and I would  
15 come in and work, then I would get comp time  
16 for that. But other than that, any hour --  
17 like, if I would come in a half hour early  
18 or stay an hour late, I didn't get any comp  
19 time for that, no, sir, because of the fact  
20 that I was supervisor.

21 Q But your classification was still an ASA-3?

22 A Correct.

23 Q Now, were you aware that there was a

1 difference in salary between an ASA-3 and a  
2 division director?

3 A No, sir.

4 Q Did you feel that you should have been  
5 compensated at a rate that a division  
6 director should have been compensated at?

7 A Sometimes, yes. That thought had entered my  
8 mind.

9 Q Now, I want to -- Well, let me ask it this  
10 way: At what point, if you recall, did  
11 things sort of calm down and everybody got  
12 into a routine doing their responsibilities,  
13 if you understand my position?

14 A I am not quite understanding you -- the  
15 content of your question.

16 Q Yeah, let me rephrase it. I ain't doing a  
17 good job today of that. I am thinking about  
18 all the money I've got to spend for  
19 Christmas.

20 You had indicated that -- or  
21 testified that, you know, when you first  
22 assumed this job, you were doing maybe a  
23 couple of hours a day, you know, trying to

Form 13  
Revised (1/1/1999)EMPLOYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel DepartmentNumber  
of StepsEmployee Name: SHARON L VIOXSocial Security Number: [REDACTED]

PLAINTIFF'S

Agency: 046/SECRETARY OF STATE

Division: \_\_\_\_\_

Classification: ADMIN SUPPORT ASST IIIClass Code: 10198

Exhibit 12

Period Covered From: 01/01/2002To: 01/01/2003Annual Raise Effective: MARCH 2003

APPRAISAL SIGNATURES: Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN: [REDACTED]Signature: [REDACTED]

Signature

Date

Initial if comments are attached

Signature: Sharon L Viox

Signature

Date

Initial if comments are attached

SSN: [REDACTED]Signature: [REDACTED]

Signature

Date

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

38.6

Responsibility  
Score

0

Disciplinary  
Score

=

38.6

Performance Appraisal  
Score

This employee's work:

☐Does Not Meet  
Standards  
(6.6 or below)☐Partially Meets  
Standards  
(6.7 - 16.6)☐Meets  
Standards  
(16.7 - 26.6)☐Exceeds  
Standards  
(26.7 - 36.6)☒Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<b>Responsibility</b>					<b>Rating</b>
1. Assists in coordinating telephone duty & training					4
2. Reserves corporate names					3
3. Explains & communicates filing procedures					4
4. Advises on request different filing fees					4
5. Enters data & posts different corporate filings					4
6. Maintains & coordinates archiving of files					4
7. Performs other assigned duties					4
8.					
9.					
10.					

**RESPONSIBILITY SCORE:**

$$\frac{27}{7} = 3.86 \times 10 = 38.6$$

Total of Responsibilities/Results Ratings      Number of Responsibilities      Average Responsibility Rating      Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: \_\_\_\_\_



PLAINTIFF'S

Exhibit 13

Form 13  
Revised (06/2005)EMPLOYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel Department

Employee Name: SHARON L VIOX Social Security Number: 412-86-6804  
 Agency: 046/SECRETARY OF STATE Division: \_\_\_\_\_  
 Classification: ADMIN SUPPORT ASST III Class Code: 10198 Position #: 04434502  
 Period Covered From: 01/01/03 To: 01/01/2004 Annual Raise Effective: MARCH 2004

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed. Signatures denote supervisor and employee discussion and receipt of form. Employee signature does not denote agreement. All signatures are mandatory.

Rating Supervisor	Employee	Reviewing Supervisor
SSN <u>6791</u>		SSN <u>6791</u>
<u>[Signature]</u> Rater Signature	<u>[Signature]</u> Employee Signature	<u>[Signature]</u> Reviewer Signature
<u>1/2/04</u> Date	<u>1/2/04</u> Date	<u>12/7/06</u> Date
Initial if comments attached	Initial if comments attached	Initial if comments attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score. Mandatory documentation is to be maintained in the agency's personnel files if a "Does Not Meet" or "Consistently Exceeds" rating is given.

24.5 - 0 = 24.5  
 Responsibility Score Disciplinary Score Performance Appraisal Score

This employee's work:

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does Not Meet Standards (6.6 or below)	Partially Meets Standards (6.7 - 16.6)	Meets Standards (16.7 - 26.6)	Exceeds Standards (26.7 - 36.6)	Consistently Exceeds Standards (36.7 - 40)

**WORK HABITS:** Check the appropriate space for each Work Habit area. Work Habits pertain to conduct occurring in this Appraisal period. Provide an explanation below for marking any work habit as "Unsatisfactory." Attach additional sheets if necessary.

	Unsatisfactory	Satisfactory
Attendance	___	<u>✓</u>
Punctuality	___	<u>✓</u>
Cooperation with Coworkers	___	<u>✓</u>
Compliance with Rules	___	<u>✓</u>

FROM

TO Atty James Wilson 12/13/2007 3:39 PM Page 9



**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
Responsibility					Rating
1. <i>Supervises ...</i>					<input type="checkbox"/> 2
2. <i>Communicates ...</i>					<input type="checkbox"/> 2
3. <i>Trains ...</i>					<input type="checkbox"/> 2
4. <i>Reviews ...</i>					<input type="checkbox"/> 2
5. <i>Performs ...</i>					<input type="checkbox"/> 3
6. <i>Scans ...</i>					<input type="checkbox"/> 2
7. <i>Verifies ...</i>					<input type="checkbox"/> 3
8. <i>Assists ...</i>					<input type="checkbox"/> 3
9. <i>Explains ...</i>					<input type="checkbox"/> 2
10. <i>Posts ...</i>					<input type="checkbox"/> 3
11. <i>Performs ...</i>					<input type="checkbox"/> 3

**RESPONSIBILITY SCORE:**

$$\begin{array}{ccccccc}
 27 & \div & 11 & = & 2.45 & \times & 10 & = & 24.5 \\
 \text{Total of} & & \text{Number of} & & \text{Average} & & & & \text{Responsibility} \\
 \text{Responsibilities/Results} & & \text{Responsibilities} & & \text{Responsibility} & & & & \text{Score} \\
 \text{Ratings} & & & & \text{Rating} & & & & 
 \end{array}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be documented below. Provide the number of disciplinary actions and steps taken with the employee during the appraisal year. If no disciplinary action has been taken, a "0" should be marked in each block provided. Attach a copy of the warning(s), reprimand(s), suspension(s) or demotion to the Appraisal.

Warning

Reprimand

Suspension

Demotion

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand, suspension, and demotion only. The Disciplinary Score does not include scores for counseling and warnings. To calculate the Disciplinary Score, identify the most severe step of discipline taken with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. If the most severe step taken with the employee in the appraisal year was one or more demotions, the Disciplinary Score will be 24. Otherwise, the Disciplinary Score will be 0.

**DISCIPLINARY SCORE:** 0

Sharon Viox

Supervises 9 personnel in posting foreign and domestic corporation documents, returning documents, name reservations, providing certificates of existence, copies and phone duty.

Communicates with customers in a professional fashion to resolve any problems with their requests with no valid complaints.

Trains personnel in all aspects of their different work requirements.

Reviews data entry and other tasks.

Performs the individual tasks on an as needed basis when employee is out.

Scans documents carefully making certain documents are legible and that documents can print out properly.

- Verifies and takes name reservation requests so that the name is not deceptively similar or causes confusion with other names pursuant to title 10-2B-4.01 with minimal errors.

Assists with processing/creating and mailing name reservation requests and creates the certificate of name reservation as necessary with no errors or valid complaints.

Explains and communicates different corporate filings procedures on request so the customer has a complete understanding and information to successfully file the appropriate documents with no valid customer complaints.

Posts cash transactions properly coding each transaction so the deposit will reflect the correct information and balance properly with no errors.

Performs other assigned duties as instructed or explained so that the end result is accomplished without errors or customer complaints.